

DJW/mat

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

TERRESA ROBERTS, et al.,

Plaintiffs,

v.

No. 01-2113-CM

SHAWNEE MISSION FORD, INC. et al.,

Defendants.

DOWDALL ENGINEERING, INC.,

Plaintiff,

v.

No. 02-2536-CM

SHAWNEE MISSION FORD, INC. et al.,

Defendants.

MEMORANDUM AND ORDER

_____ In its Motion for Protective Order (doc. 179), Defendant Shawnee Mission Ford seeks to prohibit disclosure of discoverable materials to any entity or individual not a party to this lawsuit. Shawnee Mission Ford contends that if the requested protection is denied, Plaintiffs in this matter will forward materials disclosed by Shawnee Mission Ford to various media personnel, which necessarily will result in negative publicity, annoyance and embarrassment for the car dealership. For the reasons stated below, Defendant Shawnee Mission Ford's Motion for Protective Order is denied.

Relevant Facts

These consolidated cases arise out of three automobile purchases and involve claims of fraud, misrepresentation and violations of state and federal consumer protection statutes. The first case was filed in March 2001 by Plaintiffs Scott Roberts, Terresa Roberts and Jourdan Penn against a multitude of defendants. Defendant Shawnee Mission Ford is no longer a party to that action. The second case was filed in October 2002 by Plaintiff Dowdall Engineering, also against numerous defendants. Defendant Shawnee Mission Ford is still a party to the October 2002 case. The two cases were consolidated on August 22, 2003.

On September 5, 2003, *Pitch Weekly*, a local periodical, published an article entitled “Hell on Wheels.”¹ The article reports on allegations within the March 2001 lawsuit, contains excerpts from depositions and includes quotes from several parties, including Plaintiffs, Plaintiffs’ counsel, Defendant Stephen Summers, Defendant Art Korn and various employees of Defendant Shawnee Mission Ford. Defendant Shawnee Mission Ford contends that local television and radio stations subsequently ran news stories containing information from the *Pitch Weekly* article.

As a result of this alleged negative publicity, Defendant Shawnee Mission Ford asserts it has suffered great embarrassment and annoyance. In order to prevent further embarrassment and annoyance stemming from negative publicity, Defendant Shawnee Mission Ford seeks a protective order limiting disclosure of documents and materials produced in the current action to only those individuals and entities that are actually parties to the lawsuit.

¹Doc. 179, Exhibit A.

Discussion

Before reaching the substantive issues presented by the request for protective order, the Court will address Plaintiff's procedural arguments.

First, Plaintiff contends Defendant Shawnee Mission Ford's motion is fatally defective because it fails to attach copies of the discovery requests in dispute as required by D.Kan. Rule 37.1(a) and Fed. R. Civ. P. 26(c). The Court disagrees. Although it is true that Defendant Shawnee Mission Ford did not attach copies of the Plaintiff's first discovery requests to its motion, such noncompliance is immaterial given Defendant Shawnee Mission Ford is seeking a protective order with regard to all discovery, rather than specific depositions, interrogatories, or requests.

Second, Plaintiff contends Defendant Shawnee Mission Ford's objections to discovery requests were served out of time. The Court again disagrees.

On March 20, 2003, Plaintiff electronically served Defendant Shawnee Mission Ford with interrogatories and requests for production. Defendant Shawnee Mission Ford mailed objections to the discovery requests on April 21, 2003. Plaintiffs claim the objections were made out of time; thus all discovery objections lodged in these pleadings have been waived.

Fed. R. Civ. P. 6(a) provides that if the last day of a period falls on a Saturday, Sunday, or a legal holiday, then the period runs to the next day, which is not one of the aforementioned days. The thirtieth day after electronic service of the discovery requests at issue here would have been Saturday, April 19, 2002. Therefore, Defendant Shawnee Mission Ford's objections were timely served on the following Monday, April 21, 2003.

The Court now turns to the substantive issue raised by the request for protection. The decision to enter a protective order is within the Court's discretion.² Fed. R. Civ. P. 26(c) nevertheless requires that the party seeking the protective order provide "good cause" for the order. Specifically, Rule 26(c) provides that upon a showing of good cause, a court "may make any order which justice requires to protect a party or person from annoyance, embarrassment, or undue burden or expense."

Generally, discovery is not restricted to the case for which it was produced. Indeed, the "drafter of the rules of civil procedure could easily have included a restriction that use of discovery is limited to the litigation in which it is provided, were such their intent."³ Instead, the rules "contemplate individualized protection when appropriate upon a showing of good cause."⁴ The party seeking a protective order has the burden to demonstrate good cause.

In determining whether good cause exists to issue a protective order that prohibits partial or complete dissemination of documents or other materials obtained in discovery, "the initial inquiry is whether the moving party has shown that disclosure of the information will result in a 'clearly defined and very serious injury.'"⁵ The moving party must make a "particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements."⁶

²*Thomas v. International Bus. Mach.*, 48 F.3d 478, 482 (10th Cir. 1995).

³*Zapata v. IBP, Inc.*, 160 F.R.D. 625, 628 (D. Kan. 1995).

⁴*Id.*

⁵*Zapata* 160 F.R.D. at 627 (citation omitted).

⁶*Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981) (citation omitted).

The Court finds Defendant Shawnee Mission Ford has failed to demonstrate good cause for a protective order. Generally asserting that negative publicity likely will result if a protective order is not entered falls exceedingly short of establishing a clearly defined and serious injury.⁷ The party seeking the protective order bears the burden of specifically demonstrating that the negative publicity has or will result in a clearly defined and serious injury. Defendant Shawnee Mission Ford has failed to articulate any facts demonstrating a clearly defined and serious injury in terms of negative publicity, embarrassment or annoyance. Rather, Defendant Shawnee Mission Ford makes only a blanket claim that it has and will continue to suffer “embarrassment and annoyance” from negative publicity, and a protective order is necessary to avoid such annoyance and embarrassment.

Defendant Shawnee Mission Ford’s Motion for Protective Order is denied.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this _____ day of October, 2003.

David J. Waxse
United States Magistrate Judge

⁷See *Dep’t of Economic Dev. v. Arthur Andersen & Co.*, 924 F. Supp. 449, 487 (holding good cause is not established merely by the prospect of negative publicity) (citing *Gelb v. American Telephone & Telegraph Co.*, 813 F. Supp. 1022, 1035 (S.D.N.Y. 1993)).